140-702

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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~1088.~~ ~~729~~ 429 129

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

WILLIAM HENRY FORSE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

**FILED OCTOBER 3, 1887.**

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## OCTOBER TERM, 1887.

## No. 1089.

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1 United States circuit court, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
WILLIAM HENRY FORSE, DEFENDANT.

COMPLAINANT.

The United States of America, the plaintiff above named, by its attorney, S. G. Heilborn esq., complains against William Henry Forse, the defendant herein, and for cause of complaint, shows the court:

I.

That on the fifteenth day of March A. D. one thousand eight hundred and seventy-eight, the said defendant, William Henry Forse, as principal, and J. S. Hart and L. B. Arnold, as sureties, entered into a written contract with the plaintiff, acting in that behalf through and by D. M. Key, its Postmaster-General, in which said contract the said defendant,
2 William Henry Forse, agreed and undertook, for and in consideration of the sum of eleven thousand dollars per year, to carry the United States mail upon the route then known as number 46213, being the route between Cloverdale, in the State of California, by Copeland, Ukiah, Calpella, Willits, Sherwood Valley, Cahto, Blocksburg, Bridgeville, Hydeville, Rohnerville, Eel River, Slide, and Table Bluff, to Eureka and back, six times per week, for and during the term of four years, beginning on the first day of July, one thousand eight hundred and seventy-eight, and ending on the thirtieth day of June, one thousand eight hundred and eighty-two.

That, in pursuance and by virtue of said contract, the defendant, William Henry Forse, on the first day of July, one thousand eight hundred and seventy-eight, entered upon the performance of the said service in a manner acceptable to this plaintiff.

That the contract hereinbefore mentioned was subject to and
3 contained written thereon, among other things, certain conditions, stipulations, and agreements, all of which are contained in a copy of said contract hereto annexed, marked Exhibit "A" and made a part hereof.

That the said contract, after being duly executed by said defendant, William Henry Forse, as principal, and the said J. S. Hart and L. B. Arnold, as sureties, and duly accepted and approved by the plaintiff, through and by said D. M. Key, Postmaster-General as aforesaid, was and now is on file in the Post-Office Department of the United States.

That in pursuance of said contract the defendant, William Henry Forse, on the first day of July, A. D. 1878, entered upon the performance of said service in a manner acceptable to this plaintiff, and continued so to perform such service up to and including the 30th day of June, 1882, in accordance with the terms and conditions of said original contract, and as afterwards amended, altered, and changed as is hereinafter set forth;
4 the said defendant being paid by and receiving therefor from said plaintiff such sums as were stipulated and agreed upon for the services so rendered under said original contract and as so amended, altered, and changed.

II.

That for the purpose of expediting and facilitating the service of carrying the United States mail between Cloverdale and Eureka and the intermediate places set forth and mentioned in said contract, the Post-Office Department of the United States did, by a certain order issued on the 17th day of September, A. D. 1879, agree and consent with the said defendant to expedite the said mail service by increasing the schedule of departures and arrivals from the first day of October, 1874.

That in pursuance of the order so issued by said Post-Office Department of the United States as aforesaid, the schedule of departures and arrivals of said mail service was increased to seven times or trips per week from the first day of October, 1879, and in proportion the compensation
5 for such service was increased to the sum of thirty thousand five hundred and eighty-one .55 dollars additional per year, in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

That according to the terms and conditions of the said order so made the schedule of said mail service was expedited from 72 hours in summer and 96 hours in winter to 36 hours in summer and 70 hours in winter, and the additional compensation allowed to said defendant for such service amounted to the sum of thirty thousand five hundred and eighty-one .55 dollars per annum.

III.

That said defendant consented to the terms and conditions set forth and mentioned in said order relative to the expediting and facilitating of the said service of carrying the mail of the United States between Cloverdale and Eureka, in the State of California, and the intermediate places hereinbefore mentioned, by increasing the schedule of departures
6 and arrivals.

IV.

That by reason of the said agreement and consent to the terms and conditions set forth and mentioned in said order, on the part of the said defendant, the original contract so executed by him on the 15th day of March, A. D. 1878, was and became amended, altered, and changed, and the same so amended, altered, and changed was accepted; and the said defendant then and there entered into the performance of the terms and conditions of the said contract so amended, altered, and changed, and so accepted in pursuance of the said order.

V.

That said defendant, William Henry Forse, did then and there, by means of certain false and fraudulent representations, set forth in a certain sworn statement, dated the 26th day of July, A. D. 1879, made and presented to the Post-Office Department of the United States, relative to the expediting and facilitating of the service in carrying the mail
7 of the United States on the route aforesaid, procured the said order so issued on the said 17th of September, 1879, by the said Post-Office Department amending, altering, and changing said contract.

That the said defendant, William Henry Forse, falsely and fraudulently stated and represented, in said sworn statement so made by him and presented to the Post-Office Department of the United States, that for the purpose of performing the said service of carrying the mail of the United States upon said route seven times per week, on a schedule of 72 hours in summer and 96 hours in winter, it would require eleven men and thirty-six horses, and to perform it on a schedule of 36 hours in summer and 70 hours in winter it would require thirty-one men and one hundred and twenty-eight horses.

That the said order for additional allowance was made solely upon the basis of the said statement made and sworn to on the 26th of July, 1879, by the said defendant, William Henry Forse, which said statement
8 was presented by or on behalf of the said defendant to the Post-Office Department, a copy of which said sworn statement is hereto annexed, marked Exhibit B, and made part hereof.

## VI.

That during the time the said service of carrying the mail of the United States upon said route was performed, that is to say, between the said first day of October, 1879, and the 30th day of June, 1882, the said defendant, William Henry Forse, was paid by and received from this plaintiff, upon the basis hereinbefore last mentioned, and in accordance with the terms and conditions set forth in the order so made by the Post-Office Department of the United States on the said 17th day of September, 1879, at the rate of $26,720.20 more than he was entitled to per year.

## VII.

That the said representations so made in said sworn statement by said defendant to said Post-Office Department of the United States
9 were wholly false and fraudulent, in this: That for the purpose of performing the service of carrying the mail of this plaintiff on said route upon the original schedule of six times per week, the said defendant, William Henry Forse, would require a force of twenty-two men and ninety-two horses only, and on the expedited schedule, seven times per week, he would not require more than twenty-eight men and one hundred and nineteen horses.

All of which said representations were false, as the defendant then and there well knew.

Whereas, in truth and in fact, the said defendant, William Henry Forse, in performing the service of carrying said mail on the said route seven times per week, did not require and did not employ a larger force of men or horses than was actually required in performing the same service six times per week.

That by means of the said statements and representations so falsely and fraudulently made by the said defendant, William Henry Forse,
10 and by means of false and fraudulent vouchers presented to the said Post-Office Department of the United States, the said defendant, William Henry Forse, was paid by and received from this plaintiff a larger sum of money than he was lawfully entitled to for the performance

of the said mail service under said contract so amended, altered, and changed,

That the sum so received by the said defendant, William Henry Forse, from this plaintiff by means of said statements and representations so falsely and fraudulently made in said sworn statement and said false and fraudulent vouchers presented to the Post-Office Department of the United States during the time the said contract was in full force and operation, that is to say, between the first day of July, 1878, and the 30th day of June, 1882, was one hundred and nineteen thousand four hundred and thirty-seven dollars and one cent, being sixty-one thousand seven
11 hundred dollars and eighty-two cents in excess of the amount he he was entitled to receive.

And the said false statements and representations were designed to mislead and did mislead the said Post-Office Department of the United States.

That the said defendant was entitled to receive from this plaintiff for the service so performed by him in carrying the said mail during the time herein last before mentioned, the sum of fifty-seven thousand seven hundred and thirty-six dollars and nineteen cents, and no more.

## VIII.

That by reason of the premises hereinbefore mentioned, plaintiff has sustained damages amounting to sixty-one thousand seven hundred dollars and eighty-two cents, being the sum of money so paid to said defendant, William Henry Forse, by means of the false and fraudulent representations so made in said sworn statement and the said false and fraudulent vouchers so made and presented to said Post-Office Department,
12 and in excess of the services actually performed by him.

That the said sum of sixty-one thousand and seven hundred dollars and eighty-two cents has been demanded by plaintiff from the said defendant, William Henry Forse, but that he has utterly failed, neglected, and refused, and still does fail, neglect, and refuse to pay the same or any part thereof.

Whereof plaintiff demands judgment against defendant for the said sum of sixty-one thousand and seven hundred dollars and eighty-two cents, together with interest thereon from the 30th day of June, 1882, at the rate of six per centum per annum, together with the costs of this suit.

*2nd count.*

And for a further cause of action the said plaintiff alleges that the said defendant, William Henry Forse, on the 30th day of June, 1882, was indebted to the said plaintiff in the sum of sixty-one thousand seven hundred dollars and eighty-two cents, for so much money by the said defendant before that time had and received to and for the use of the said
13 plaintiff, which said sum of money the said plaintiff avers was then due and payable, yet the said defendant, although often requested so to do, has not paid said sum of money nor any part thereof.

Wherefore the said plaintiff prays judgment for the sum of sixty-one thousand and seven hundred dollars and eighty-two cents, with interest thereon, at the rate of six per centum per annum, from the 30th day of June, A. D. 1882, together with costs of this suit.

*3rd count.*

And for a further cause of action the said plaintiff alleges that from and after the 1st day of July, 1878, up to and including the 30th day of June, 1882, the said defendant, William Henry Forse, was a contractor for carrying the United States mail upon the mail route then known as route number 46213, being the route between Cloverdate, in the State of California, by Capeland, Ukiah, Calpella, Willits, Sherwood Valley, Cahto, Blocksburg, Bridgerville, Hydeville, Rohnerville, Eel River, Slide,
14 and Table Bluff, to Eureka, in the said State of California. That on the 17th day of September, 1879, an order was made by the Post Office Department, to take effect the 1st day of October, 1879, expediting the schedule and reducing the running time upon which the mail over said route was carried from 72 hours in summer and 96 hours in winter to 36 hours in summer and 70 hours in winter, and allowing an additional sum therefor of thirty thousand five hundred and eighty-one dollars and fifty-five cents per annum in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

That the said order for additional allowance was made solely upon the basis of a certain statement made and sworn to on the 26th day of July, 1879, by the said defendant, William Henry Forse, which said statement was presented by or on behalf of the said defendant to the Postmaster-General, and a copy of which is hereto annexed, marked Exhibit "B," and made a part hereof.

15 That the said additional allowance made as aforesaid was thereafter from time to time paid to the said defendant, William Henry Forse, and to sundry and divers persons acting for and on behalf of the said defendant, and duly authorized and empowered to receive the same for and upon his account.

The plaintiff further says that the allegations in the said sworn statement presented to the Postmaster-General as aforesaid, upon the basis of which the said additional allowance was ordered and payment made as aforesaid, were false and untrue, as the defendant then and there well knew, in this, that it was therein alleged that the number of men and animals required to perform the mail service on the said route upon the schedule of 72 hours in summer and 96 hours in winter, then existing, was but 21 men and 92 animals, and that on a schedule of 36 hours in summer and 70 hours in winter there would be required to perform said
16 service 28 men and 119 animals, thus showing an apparent increase in the number of men and animals required by said change of scehdule of 7 men and 27 animals; whereas, in truth and in fact, the number of men and animals required and actually employed to perform service upon the said route upon the original schedule of 72 hours in summer and 96 hours in winter was 21 men and 92 animals, and the number required and actually used in the schedule of 36 hours in summer and 70 hours in winter was 21 men and 92 animals. And the false allegations were designed to mislead, and did mislead, the Postmaster-General.

And the plaintiff further says that by reason of the said false allegations in the statement aforesaid the plaintiffs' officers were induced to pay, and did pay, the moneys aforesaid from time to time between the first day of

July, 1878, and the 30th day of June, 1882, amounting in the aggregate to the sum of sixty-one thousand and seven hundred dollars and eighty-two cents, which sum was paid by plaintiff's officers to the defend-
17 ant as above set forth, in mistake of fact, and was received by the said defendant contrary to the provisions of section 3961 of the Revised Statutes. Said payments are more fully and at length set out in the statement hereto annexed, marked Exhibit "C," and made a part of this petition. Said exhibit also shows the amount which the said defendant was lawfully entitled to receive upon the basis of the actual increase in stock and carriers consequent upon the reduction in the running time upon said route from 72 hours in summer and 96 hours in winter to 36 hours in summer and 70 hours in winter, as hereinbefore mentioned.

Wherefore the said plaintiff prays judgment for the sum of sixty-one thousand and seven hundred dollars and eighty-two cents, with interest thereon from the 30th of June, 1882, at the rate of six per centum per annum, together with the costs of this suit.

S. G. HILBORN,
*United States Attorney.*

18 "EXHIBIT A."

1880–'84.

UNITED STATES OF AMERICA,
*Ukiah, Mendocino Co., Cal.*

No. 46213.] [$11,000 per annum.

This article of contract, made March 15th, eighteen hundred and seventy-eight, between the United States of America (acting in this behalf by the Postmaster-General) and W. H. Forse, contractor, and J. G. Hart, of , and L. B. Arnold, of , as his sureties,

Insert here names of sureties and their P. O. address.

Witnesseth, that whereas W. H. Forse has been accepted, according to law, as contractor for transporting the mail on route No. 46213 from Cloverdate, Cal., by Copeland, Ukiah, Calpella, Willits, Sherwood Valley, Cahto, Blocksburgh, Bridgeville, Hydeville, Bohnerville, Eel River, Slide, and Table Bluff, to Eureka and back, six times a week, by a schedule satisfactory to the Department, at eleven thousand dollars per year,
19 for and during the term beginning July first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two: Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule; and in all cases to carry said mail in preference to passengers and freight, and to their entire

exclusion if its weight, bulk, or safety shall so require; and that they will carry the mail, upon demand, by any conveyance which said con-
20 tractor regularly runs, or is concerned in running, on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2d. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oil-cloth or bear-skin if carried on a horse, and in a foot under the driver's seat if carried in a coach or other venicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at, each post-office on the route, or that may hereafter be established on the route (or on any route that may hereafter be established, and to which this contract may be extended as hereinafter provided), and into the post-office at each end of the route, and into the post-office, if one is there kept, at the place at which the carrier stops for the night, and if no post-office is there kept, to lock it up in some secure place, at the risk of the contractor.

21 They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit by themselves, or either of them, or either of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; nor to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail-locks and bags, and other postal supplies,
22 and also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balance due from them to the United States on their quarterly returns, and faithfully to render an account to the Postmaster-General in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balance remaining in his hands.

For which services, when performed, the said W. H. Forse, contractor, is to be paid by the United States the sum of eleven thousand dollars a year, to wit: Quarterly, in the months of November, February, May, and August, through the postmasters on the route, or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter
23 stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties, that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and also increase, decrease, or extend the service in accordance with law, he allowing a pro rata in-

crease of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and, in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the service retained. Provided, however, that in case of increased expedition, the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid, that they shall forfeit—

24 1. The pay of a trip when it is not run, and, in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in the mail, matter which should go by mail; or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mail, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased

25 into penalties of a higher amount. Provided that, except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service can not be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor

26 and his sureties under this contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the direction of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eight, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

27 In witness whereof, the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names respectively.

D. M. KEY,
*Postmaster-General.*

Signed, sealed, and delivered by the Postmaster-General in the presence of

J. N. DORRIS.

And by the other parties hereto in the presence of
J. J. MORRISON,
*Witnesses.*

Signed this 7th day of May, 1878.

W. H. FORSE, [SEAL.]
*Contractor.*

Signed this 7 day of May, 1878.
J. L. HART, [SEAL.]
Signed this 8th day of May, 1878.
L. B. ARNOLD, [SEAL.]
} *Sureties.*

POST-OFFICE, UKIAH, *May 9th*, 1878.

28 I hereby certify that J. L. Hart, of Ukiah, Cal., and L. B. Arnold, of Ukiah, Cal., are good and sufficient sureties for the amount of the foregoing contract.

A. W. THOMPSON,
*Postmaster.*

*The schedule of departures and arrivals—Summer schedule.*

Leave Cloverdale daily, ex. Sun., at 6 a. m.;
Arrive at Eureka in 72 hours.
Leave Eureka daily, ex. Sun., at 6 a. m.;
Arrive at Cloverdale in 72 hours.

*Winter schedule.*

Leave Cloverdale daily, ex. Sun., at a. m.;
Arrive at Eureka in 96 hours;
Leave Eureka daily, ex. Sun., at 6 a. m.;
Arrive at Cloverdale in 96 hours.

Provided, that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to the time fixed in this schedule.

Certificate of the oath of mail contractors and carriers, required by act of Congress of June 8, 1872, as amended by act of March 5, 1874, 18th Stats., p. 19.

29 (Take this oath after signing the foregoing contract):

I, William H. Forse, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 46213, from Cloverdale to Eureka, State of California, do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the United States which may come into my possession or control.

And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic. So help me God.

W. H. FORSE, *Contractor.*

COUNTY OF MENDOCINO,
*State of California, ss:*

Sworn before the subscriber, clerk of the county courts in and for the county and State aforesaid, this 8th day of May, A. D. 1878, and
30 I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

J. L. WILSON, [SEAL.]
*Clerk of the County Courts of Mendocino Co., Cal.*

31 EXHIBIT "B."

UKIAH, CAL., *July 26th*, 1879.

To perform the mail service on mail route No. 46213, Cloverdale to Eureka, under the present schedule of seventy-two (72) hours in summer, and ninety-six (96) hours in winter, seven times a week, will require eleven (11) men and thirty-six (36) horses.

And to perform the same mail service on a schedule of thirty-six (36) hours in summer, and seventy (70) hours in winter will require thirty-one (31) men and one hundred and twenty-eight (128) horses.

(Signed) W. H. FORSE,
*Contractor, Route* 46213.

Subscribed and sworn to before me July 26th, 1879.

(Signed) J. L. WILSON,
*Clerk County Court Mendocino Co., Cal.*

DR. *Statement of account—W. H. Forse, contractor, in account with the United States.* CR.

| Route. | | | Route. | | |
|---|---|---|---|---|---|
| 46213 | To collections 3d qr. 1878 | 469.23 | 46, 213 | By transportation, 3rd qr. 1878 | 2,750.00 |
| " | " deduction " | 31.04 | " | " " " 4th " " | 2,750.00 |
| " | " warrant favor W. H. Forse | 2,249.73 | " | " " " 1st " 1879 | 2,750.00 |
| " | " collections 4th qr. 1878 | 567.84 | " | " " " 2nd " " | 2,750.00 |
| " | " warrant favor W. H. Forse | 2,182.16 | " | " " " 3rd " " | 2,750.00 |
| " | " collections 1st qr. 1879 | 528.19 | " | " " " 4th " " | 10,853.72 |
| " | " deduction " | 50.25 | " | " " " 1st " 1880 | 10,853.72 |
| " | " warrant favor W. H. Forse | 2,171.56 | " | " remission of deduction | 1,248.24 |
| " | " collections 2nd qr. 1879 | 536.67 | | | |
| " | " warrant favor W. H. Forse | 2,212.33 | | | |
| " | " collections 3d qr. 1879 | 556.30 | | | |
| " | " warrant favor W. H. Forse | 2,193.70 | | | |
| " | " collections 4th qr. 1879 | 592.40 | | | |
| " | " deduction " | 1,367.18 | | | |
| " | " warrant favor W. H. Forse | 6,290.42 | | | |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " collections 1st qr. 1880 | 704.81 | | | |
| " | " deduction " | 29.73 | | | |
| " | " warrant favor W. H. Forse | 1,248.24 | | | |
| 33 | " warrant favor W. H. Forse | 7,515.46 | " | " transportation 2nd qr. 1880 | 10,853.72 |
| " | " " " A. H. Brown, assignee | 2,603.72 | " | " " 3rd " " | 10,853.72 |
| " | " collections 2nd qr. 1880 | 595.04 | " | " " 4th " " | 10,853.72 |
| " | " deduction " | 463.72 | " | " " 1st " 1881 | 10,853.72 |
| " | " warrant favor W. H. Forse | 7,191.24 | " | " " 2nd " " | 10,853.72 |
| " | " " " A. H. Brown, assignee | 2,603.72 | " | " " 3rd " " | 10,853.72 |
| " | " " " W. H. Forse | 8,250.00 | " | " transportation 4th qr. 1881 | 8,364.36 |
| " | " " " A. H. Brown, assignee | 2,603.72 | " | " " 1st " 1882 | 5,875.00 |
| " | " " " W. H. Forse | 8,250.00 | " | " " 2nd " " | 5,875.00 |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " deduction 1st qr. 1881 | 148.67 | | | |
| " | " warrant favor W. H. Forse | 8,101.33 | | | |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " deduction 2nd qr. 1881 | 6.90 | | | |
| " | " warrant favor W. H. Forse | 10,846.82 | | | |
| " | " deduction 3rd quarter 1881 | 43 05 | | | |
| " | " warrant favor W. H. Forse | 10,810.67 | | | |
| 34 | " deduction 4th qr. 1881 | 105.91 | | | |
| " | " warrant favor W. H. Forse | 8,258.45 | | | |
| " | " deduction 1st qr. 1882 | 67.23 | | | |
| " | " warrant favor W. H. Forse | 5,807.77 | | | |
| " | " deduction 2nd qr. 1882 | 227.67 | | | |
| " | " warrant favor W. H. Forse | 5,647.33 | | | |
| | | 121,942.36 | | | 121,942.36 |

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
*Washington, D. C., September 18th, 1884.*

HON. H. D. LYMAN,
*Second Ass't P. M. General, Washington, D. C.*

*Auditor.*

35 Route No. 46213.

Cloverdale to Eureka, California.
Contract term, July 1, 1878, to June 30, 1882.
Contractor, William H. Forse.

Cost of service was as follows:

| | |
|---|---|
| From July 1, 1878, to Sep. 30, 1879, @ $11,000.00 per annum | $13,750.00 |
| From Oct. 1, 1879, to Nov. 15, 1881, @ 43,414.88 per annum | 92,256.62 |
| From Nov. 16, 1881, to June 30, 1882, @ 23,500.00 per annum | 14,687.50 |
| Total allowance for service | $120,694.12 |

Deductions were made as follows:

| | |
|---|---|
| Quarter ended Sep. 30, 1878 | $31.04 |
| " " Mar. 31, 1879 | 50.25 |
| " " Dec. 31, 1879 | 1,367.18 |
| " " Mar. 31, 1880 | 29.73 |
| " " June 30, 1880 | 463.72 |
| " " Mar. 31, 1881 | 148.67 |
| " " June 30, 1881 | 6.90 |
| " " Sep. 30, 1881 | 43.05 |
| " " Dec. 31, 1881 | 105.91 |
| " " Mar. 31, 1882 | 67.23 |
| " " June 30, 1882 | 227.67 |
| Total deduction | $2,541.35 |

36 Remission was made as follows:

| | | |
|---|---|---|
| Quarter ended Dec. 31, 1879 | $1,284.24 | |
| Total remission | | 1,284.24 |
| Deductions not remitted | | $1,257.11 |

RECAPITULATION.

| | |
|---|---|
| Total allowance for service | $120,694.12 |
| Total deduction not remitted | 1,257.11 |
| Amount actually paid for service | $119,437.01 |

Pay for service on the basis of stock and carriers actually employed would be as follows:

| | |
|---|---|
| From July 1, 1878, to Sep. 30, 1879, @ $11,000.00 p.a. | $13,750.00 |
| " Oct. 1, 1879, to Nov. 15, 1881, @ 16,694.68 | 35,476.19 |
| " Nov. 16, 1881, to June 30, 1882, @ 14,180.15 | 8,862.58 |
| Total allowance for service on new basis | $58,088.77 |

Deductions on new basis would be as follows:

| | |
|---|---|
| Quarter ended Sep. 30, 1878 | $31.04 |
| " " Mar. 31, 1879 | 50.25 |
| " " Dec. 31, 1879 | 206.03 |
| " " Mar. 31, 1880 | 11.43 |
| " " June 30, 1880 | 89.17 |
| " " Mar. 31, 1881 | 57.15 |
| " " June 30, 1881 | 88 |
| " " Sep. 30, 1881 | 5.42 |
| " " Dec. 31, 1881 | 16.70 |
| " " Mar. 31, 1882 | 16.15 |
| " " June 30, 1882 | 28.67 |
| Total deduction on new basis | $512.89 |
| Remission on new basis: | |
| Quarter ended Dec. 31, 1879 $160.31 | |
| Total remission on new basis | 160.31 |
| Total deduction less remission | $352.58 |

Recapitulation on new basis:

| | |
|---|---|
| Total allowance for service on new basis | $58,088.77 |
| Total deduction less remission " " " | 352.58 |
| Amount which should have been paid | $57,736.19 |

Final recapitulation:

| | |
|---|---|
| Amount actually paid for service | $119,437.01 |
| Amount which should have been paid | 57,736.19 |
| Amount to be recouped | $61,700.82 |

(Endorsed:) Filed December 18, 1884.

L. S. B. SAWYER,
*Clerk.*

38 *Summons.*

United States of America, circuit court of the United States, ninth circuit, district of California.

Action brought in the said circuit court, and the complaint filed in the office of the clerk of said circuit court in the city and county of San Francisco.

THE UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
WILLIAM HENRY FORSE, DEFENDANT.

The President of the United States of America, greeting:

To WILLIAM HENRY FORSE, Defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the circuit court of the United States,

ninth circuit, in and for the district of California, and to file your plea, answer, or demurrer to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons, if served in this county, or if served out of
39 this county, then within thirty days, or judgment by default will be taken against you.

The said action is brought to recover from you the sum of sixty-one thousand seven hundred $\frac{87}{100}$ dollars, money alleged to have been had and received by you and paid by said plaintiff to you by reason of your false and fraudulent representations, &c., together with interest on said sum from the 30th day of June, 1882, at the rate of six per centum per annum and the costs of this action, all of which is more fully set out in the complaint on file herein, to which reference is hereby made, and if you fail to appear and plead, answer or demur, as herein required, your default will be entered, and the plaintiff will apply to the court for the relief demanded in the complaint herein.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of December, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 109th.

[SEAL.]

L. S. B. SAWYER,
*Clerk,*

40 By F. D. MONCTON,
*Deputy Clerk.*

(Endorsed:)

UNITED STATES MARSHAL'S OFFICE,
*District of California:*

I hereby certify that I received the within writ on the 26th day of December, 1884, and personally served the same on the 9th day of March, 1885, by delivering to and leaving with William H. Forse, said defendant named therein, personally, at the county of Mendocino, in said district, a certified copy thereof, together with a certified copy of the bill of complaint attached thereto.

M. M. DREW,
*U. S. Marshal,*
By M. R. CASAD,
*Deputy.*

SAN FRANCISCO, *March 11th*, 1885.
Filed March 12, 1885.

L. S. B. SAWYER,
*Clerk,*
By F. D. MONCTON,
*Deputy Clerk.*

41 *Amended complaint.*

United States circuit court, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
WILLIAM HENRY FORSE, DEFENDANT.

Now comes the United States of America, the plaintiff above named, by S. G. Hilborn, esq., United States attorney, and, by leave of the court first had and obtained, files this his amended complaint against said defendant, and, for cause of complaint, shows the court:

I.

That on the fifteenth day of March, A. D. one thousand eight hundred and seventy-eight, the said defendant, William Henry Forse, as principal, and J. S. Hart and L. B. Arnold, as sureties, entered into a written contract with the plaintiff, acting in that behalf through and by D. M. Key, its Postmaster-General, in which said contract the said defendant,
42 William Henry Forse, agreed and undertook for and in consideration of the sum of eleven thousand dollars per year to carry the United States mail upon the route then known as number 46213, being the route between Cloverdale, in the State of California, by Copeland, Ukiah, Capella, Willits, Sherwood Valley, Cahto, Blocksburg, Bridgeville, Hyderville, Rohnerville, Eel River, Slide, and Table Bluff, to Eureka and back, six times per week, for and during the term of four years, beginning on the first day of July, one thousand eight hundred and seventy-eight, and ending on the thirtieth day of June, one thousand eight hundred and eighty-two.

That in pursuance and by virtue of said contract, the defendant, William Henry Forse, on the first day of July, one thousand eight hundred and seventy-eight, entered upon the performance of the said service in a manner acceptable to this plaintiff.

That the contract hereinbefore mentioned was subject to and contained written thereon, among other things, certain conditions, stipulations, and agreements, all of which are contained in a copy of said contract
43 hereto annexed, marked Exhibit "A," and made a part hereof.

That the said contract, after being duly executed by said defendant, William Henry Forse, as principal and the said J. S. Hart and L. B. Arnold as sureties, and duly accepted and approved by the plaintiff, through and by said D. M. Key, Postmaster-General as aforesaid, was, and now is, on file in the Post-Office Department of the United States.

That in pursuance of said contract the defendant, William Henry Forse, on the first day of July, A. D. 1878, entered upon the performance of said service in a manner acceptable to this plaintiff, and continued so to perform such service up to and including the 30th day of June, 1882, in accordance with the terms and conditions of said original contract, and as afterwards amended, altered, and changed as is hereinafter set forth, the said defendant being paid by, and receiving therefor from, said plaintiff such sums as were stipulated and agreed upon for the services so rendered under said original contract, and as so amended, altered, and changed.

44

II.

That for the purpose of expediting and facilitating the service of carrying the United States mail between Cloverdale and Eureka, and the intermediate places set forth and mentioned in said contract, the Post-Office Department of the United States did, by a certain order issued on the 17th day of September, A. D. 1879, agree and consent with the said defendant to increase the service upon said route one trip per week, and to expedite the said mail service by shortening the schedule of arrivals and departures from the first day of October, 1879.

That in pursuance of the order so issued by said Post-Office Department, as aforesaid, the mail service upon said route was increased to seven trips per week from the first day of October, 1879, and the additional sum of $1,833.33 per annum was allowed therefor.

That in further pursuance of said order the speed upon which said mail was carried over said route was increased and the schedule of run-
45 ning time reduced from 72 hours in summer and 96 hours in winter to 36 hours in summer and 70 hours in winter, and an additional sum allowed for such expedition or increase of speed of $30,581.50 per annum, said allowance being made in supposed accordance with the provisions of section 3961 of the Revised Statutes of the United States.

III.

That said defendant consented to the terms and conditions set forth and mentioned in said order relative to the expediting and facilitating of the said service of carrying the mail of the United States between Cloverdale and Eureka, in the State of California, and the intermediate places hereinbefore mentioned, by increasing the schedule of departures and arrivals.

IV.

That by reason of the said agreement and consent to the terms and conditions set forth and mentioned in said order, on the part of the said defendant, the original contract so executed by him on the 15th day of March, A. D. 1878, was and became amended, altered, and changed,
46 and the same, so amended, altered, and changed was accepted; and the said defendant then and there entered into the performance of the terms and conditions of the said contract so amended, altered, and changed, and so accepted in pursuance of the said order.

V.

That said defendant, William Henry Forse, did then and there, by means of certain false and fraudulent representations set forth in a certain sworn statement, dated the 26th day of July, A. D. 1879, made and presented to the Post-Office Department of the United States relative to the expediting and facilitating of the service in carrying the mail of the United States on the route aforesaid, procured the said order so issued on the 17th of September, 1879, by the said Post-Office Department, amending, altering, and changing said contract.

That the said defendant, William Henry Forse, falsely and fraudulently stated and represented in said sworn statement so made by him and presented to the Post-Office Department of the United States, that
47 for the purpose of performing the said service of carrying the mail of the United States upon said route seven times per week, on a schedule of 72 hours in summer and 96 hours in winter, it would require eleven men and thirty-six horses, and to perform it on a schedule of 36 hours in summer and 70 hours in winter would require a force of 31 men and 128 horses.

That the said order, for additional allowance, was made solely upon the basis of the said statement made and sworn to on the 26th of July, 1879, by the said defendant, William Henry Forse, which said statement was presented by or on behalf of the said defendant to the Post-Office Department, a copy of which said sworn statement is hereto annexed, marked Exhibit "B," and made part hereof.

VI.

That during the time the said service of carrying the mail of the United States upon said route was performed, that is to say between the said first day of October, 1879, and the 30th day of June, 1882, the said defendant, William Henry Forse, was paid by and received from this
48 plaintiff, upon the basis hereinbefore last mentioned, and in accordance with the terms and conditions set forth in the order so made by the Post-Office Department of the United States, on the said 17th day of September, 1879, at the rate of $26,720.20 per annum more than he was entitled to.

VII.

That the said representations so made in said sworn statement by said defendant to said Post-Office Department of the United States, was wholly false and fraudulent in this: That for the purpose of performing the service of carrying the mail of this plaintiff on said route upon the original schedule 7 times per week, the said defendant, William Henry Forse, would require a force of only 11 men and 36 horses, and that on the expedited schedule seven times per week he would require 31 men and 128 horses; thereby indicating an apparent increase in the number of men and horses necessitated by the order of the Postmaster-General expediting the said schedule, of 20 men and 92 horses.

49 All of which said representations were false, as the defendant then and there well knew.

Whereas, in truth and in fact, the said defendant, William Henry Forse, in performing the service of carrying said mail on said route upon the original schedule did require not less than 21 men and 92 horses, and to perform said service upon the expedited schedule seven times per week there were required and actually employed by said defendant upon said route not more than 28 men and 119 horses, making an actual increase in the number of men and horses required to perform said mail service upon the expedited schedule, over and above the number required to perform said service upon the original schedule, of but 7 men and 27 horses.

VIII.

That by reason of the premises hereinbefore mentioned, plaintiff has sustained damages amounting to sixty-one thousand seven hundred dollars and eighty-two cents, being the sum of money so paid to said de-
50 fendant, William Henry Forse, by means of the false and fraudulent representations so made in said sworn statement and the said false and fraudulent vouchers so made and presented to said Post-Office Department, and in excess of the services actually performed by him.

That the said sum of sixty-one thousand and seven hundred dollars and eighty-two cents has been demanded by plaintiff from the said defendant, William Henry Forse, but that he has utterly failed, neglected, and refused, and still does fail, neglect, and refuse to pay the same or any part thereof.

Wherefore plaintiff demands judgment against defendant for the said sum of sixty-one thousand and seven hundred dollars and eighty-two cents, together with interest thereon from the 30th day of June, 1882, at the rate of six per centum per annum, together with the costs of this suit.

*Second court.*

And for a further cause of action, the said plaintiff alleges that the said defendant, William Henry Forse, on the 30th day of June, 1882,
51 was indebted to the said plaintiff in the sum of sixty thousand seven hundred dollars and eighty-two cents, for so such money by the said defendant before that time had and received to and for the use of the said plaintiff, which said sum of money the said plaintiff avers was then due and payable, yet the said defendant, although often requested so to do, has not paid said sum of money or any part thereof.

Wherefore the said plaintiff prays judgment for the sum of sixty-one thousand and seven hundred dollars and eighty-two cents, with interest thereon at the rate of six per centum per annum from the 30th day of June, A. D. 1882, together with costs of this suit.

*Third count.*

And for a further cause of action the said plaintiff alleges that from and after the 1st day of July, 1878, up to and including the 30th day of June, 1882, the said defendant, William Henry Forse, was a contractor
52 for carrying the United States mail upon the mail route then known as route number 46213, being the route between Cloverdale, in the State of California, by Copeland, Ukiah, Calpella, Willits, Sherwood Valley, Cahto, Blocksburg, Bridgeville, Hyderville, Rohnerville, Eel River, Slide, and Table Bluff, to Eureka, in the said State of California.

That on the 17th day of September, 1879, an order was made by the Post-Office Department to take effect the 1st day of October, 1879, expediting the schedule, and reducing the running time upon which the mail over said route was carried from 72 hours in summer and 96 hours in winter to 36 hours in summer and 70 hours in winter, and allowing an additional sum therefor of thirty thousand five hundred and eighty-one dollars and fifty-five cents per annum, in supposed accordance with the

provisions of law as contained in section 3961 of the Revised Statutes of the United States.

That the said order for additional allowance was made solely upon the basis of a certain statement made and sworn to on the 26th day
53 of July, 1879, by the said defendant, William Henry Forse, which said statement was presented by or on behalf of the said defendant to the Postmaster-General, and a copy of which is hereto annexed, marked Exhibit "B," and made a part hereof.

That the said additional allowance made as aforesaid was thereafter from time to time paid to the said defendant, William Henry Forse, and to sundry and divers persons acting for and on behalf of the said defendant, and duly authorized and empowered to receive the same for and upon his account.

The plaintiff further says that the allegations in said sworn statement presented to the Postmaster-General as aforesaid, upon the basis of which the said additional allowance was ordered and payments made as aforesaid, were false and untrue, as the defendant then and there well knew, in this, that it was therein alleged that the number of men and animals required to perform the mail service seven times a week upon the schedule of
54 72 hours in summer and 96 hours in winter then existing was but 11 men and 36 horses, and that on the schedule of 36 hours in summer and 70 hours in winter it would require 31 men and 128 horses, thus showing an apparent increase in the number of men and animals required by said change of schedule of 20 men and 92 horses.

Whereas, in truth and in fact, the number of men and horses required to perform the service upon the original schedule of 72 hours in summer and 96 hours in winter was not less than 21 men and 92 horses, and the number required and actually employed in performing said service upon the expedited schedule did not exceed 28 men and 119 horses.

And the said false allegations were designed to mislead and did mislead the Postmaster-General.

And the plaintiff further says that by reason of the said false allegations in the statement aforesaid the plaintiff's officers were induced to pay, and did pay, the moneys aforesaid, from time to time, between the first day of July, 1878, and the 30th day of June, 1882, amounting in the
55 aggregate to the sum of sixty-one thousand and seven hundred dollars and eighty-two cents, which sum was paid by plaintiff's officers to the defendant, as above set forth, in mistake of fact, and was received by the said defendant contrary to the provisions of section 3961 of the Revised Statutes. Said payments are more fully and at length set out in the statement hereto annexed, marked Exhibit "C," and made a part of this petition. Said exhibit also shows the amount which the said defendant was lawfully entitled to receive upon the basis of the actual increase in stock and carriers consequent upon the reduction in the running time upon said route from 72 hours in summer and 96 hours in winter to 36 hours in summer and 70 hours in winter, as hereinbefore mentioned.

Wherefore the said plaintiff prays judgment for the sum of sixty-one thousand and seven hundred dollars and eighty-two cents, with interest thereon from the 30th of June, 1882, at the rate of six per centum
56 per annum, together with costs of this suit.

S. G. HEILBORN,
*United States Attorney.*

EXHIBIT "A."

POST-OFFICE DEPARTMENT,
*Washington, D. C., September* 22, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, the day and year above written.

[SEAL.] W. O. GRESHAM,
*Postmaster-General.*

UNITED STATES OF AMERICA,
*Ukiah, Mendocino Co., Cal.:*

[No. 46213.] [$11,000 per annum.]

This article of contract, made March 15th, eighteen hundred and seventy-eight, between the United States of America (acting in this behalf by the Postmaster-General) and W. H. Forse, contractor,
57 Insert here names of sureties and their P. O. address. and J. S. Hart, of and L. B. Arnold, of as his sureties.

Witnesseth, That whereas W. H. Forse has been accepted, according to law, as contractor for transporting the mail route No. 46213, from Cloverdale, Cal., by Copeland, Ukiah, Calpella, Willits, Sherwood Valley, Cahto, Blocksburgh, Bridgeville, Hydeville, Bohnerville, Eel River, Slide, and Table Bluff to Eureka and back, six times a week, by a schedule satisfactory to the Department, at eleven thousand dollars per year, for and during the term beginning July first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two; Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves,

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule
58 of departures and arrivals, and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule, and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require; and that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running, on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2nd. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oil-cloth or bear skin if carried on a horse, and in a boot under the driver's seat if carried in a coach or other vehicle.

3d. To take the mail and every part thereof from, and deliver it and every part thereof at, each post-office on the route, or that may
59 hereafter be established on the route (or on any route that may hereafter be established and to which this contract may be ex-

tended as hereinafter provided), and into the post-office at each end of the route, and into the post-office, if one is there kept, at the place at which the carrier stops for the night, and if no post-office is there kept, to lock it up in some secure place, at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and to bind themselves jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit by themselves or either of them or either of their agents, or be concerned in transmitting commercial intelligence more rapidly than by mail; not
60 to carry otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks, and bags, and other postal supplies, and also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is used without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route the balances from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General, in the settlement of the quarterly accounts of said contractor, and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which services, when performed, the said W. H. Forse, contractor, is to be paid by the United States the sum of eleven thousand dollars a year, to wit, quarterly, in the months of November, February, May, and August, through the postmaster on the route, or otherwise,
61 at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease, or extend the service in accordance with law, he allowing a pro rata increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and, in case of decrease, curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the service retained: Provided, however, That in case of increased expedition, the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid, that they shall forfeit:

62 1. The pay of a trip when it is not run, and in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in the mail, matter which should go by mail; or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the discretion of the Postmaster-
63 General, according to the nature or frequency of the failure and the importance of the mail; provided that, except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; wherever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service cannot be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his
64 sureties under his contract; but such damages may, for the purpose of set-off or counter-claim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress, approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eight, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

65 In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties

have hereunto set their hands and seals the day and year set opposite their names, respectively.

D. M. KEY,
*Postmaster-General.*

Signed, sealed, and delivered by the Postmaster-General in the presence of—
J. N. DORRIS.

And by the other parties hereto in the presence of—
J. J. MORRISON, *Witnesses.*

Signed this 7th day of May, 1878.

W. H. FORSE, [SEAL.]
*Contractor.*

Signed this " day of " 1878.
J. L. HART, [SEAL.]
Signed this " day of " 1878.
L. B. ARNOLD, [SEAL.]
} *Sureties.*

POST-OFFICE, UKIAH, *May 9th*, 1878.

I hereby certify that J. L. Hart, of Ukiah, Cal., and L. B. Arnold, of Ukiah, Cal., are good and sufficient sureties for the amount of the foregoing contract.

A. W. THOMPSON,
*Postmaster.*

66 *The schedule of departures and arrivals.—Summer schedule.*

Leave Cloverdale daily, ex. Sun., at 6 a. m.
Arrive at Eureka in 72 hours.
Leave " " " " at 6 a. m.
Arrive at Cloverdale in 72 hours.

*Winter schedule.*

Leave " daily, ex. Sun., at 6 a. m.
Arrive at Eureka in 96 hours.
Leave " " " " at 6 a. m.
Arrive at Cloverdale in 96 hours.

*Provided*, That when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to the time fixed in this schedule.

Certificate of the oath of mail contractors and carriers, required by act of Congress of June 8, 1872, as amended by act of March 5, 1874, 18th Stats., p. 19.

(Take this oath after signing the foregoing contract.)

I, William H. Forse, being "employed in the care, custody, and conveyance of the mail," as contractor on route No. 46213, from Cloverdale
67 to Eureka, State of California, do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden

by the laws in relation to the establishment of post-office and post-roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control. And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic. So help me God.

W. H. FORSE,
*Contractor.*

COUNTY OF MENDOCINO,
*State of California, ss:*

Sworn before the subscriber, clerk of the county courts in and for the county and State aforesaid, this 8th day of May, A. D. 1878; and I also certify that the person above named is above the age of twenty-one years to the best of my knowledge and belief.

J. L. WILSON, [SEAL.]
*Clerk of the County Court of Mendocino Co., Cal.*

NOTE.—When the oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States
68 court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

EXHIBIT "B."

J. H. C.] [46213

POST-OFFICE DEPARTMENT,
*Washington, D. C., August 2nd,* 1883.

I, A. D. Hazen, Act'g Postmaster-General of the United States of America, certify that the annexed is a true copy of the original sworn statement on file in this Department.

In testimony whereof, I have hereto set my hand, and caused the seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.]

A. D. HAZEN,
*Act'g Postmaster-General.*

69 UKIAH, CAL., *July 26th,* 1879.

To perform the mail service on mail route No. 46213, Cloverdale to Eureka, under the present schedule of seventy-two (72) hours in summer, and ninety-six (96) hours in winter, seven times a week, will require eleven (11) men and thirty-six (36) horses.

And to peform the same mail service on a schedule of thirty-six (36) hours in summer, and seventy (70) hours in winter, will require thirty-one (31) men and one hundred twenty-eight (128) horses.

(Signed) W. H. FORSE,
*Contractor.*

Subscribed & sworn to before me, July 26th, 1879. Route 46213.

(Signed) J. L. WILSON,
*Clerk County Court, Mendocino Co, Cal.*

70 EXHIBIT "C."

Form No. 1001.] [Certificate F.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, R. F. Crowell, auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement, from the records of this office, of the account of W. H. Forse, contractor for the transportation of the mails on route 46213, from July 1, 1878, to June 30, 1882.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, district of California, this nineteenth day of September, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] R. F. CROWELL,
*Auditor.*

71 Form 685.]

# EXHIBIT "C."

DR. *Statement of account—W. H. Forse, contractor, in account with the United States.* DR.

| Route. | | | Route. | | |
|---|---|---|---|---|---|
| 46213 | To collections 3rd qr. 1878 | 469.23 | 46213 | By transportation 3rd qr. 1878 | 2,750.00 |
| " | " deduction " | 31.04 | " | " " 4th " " | 2,750.00 |
| " | " warrant favor W. H. Forse | 2,249.73 | " | " " 1st " 1879 | 2,750.00 |
| " | " collections 4th qr. 1878 | 567.84 | " | " " 2nd " " | 2,750.00 |
| " | " warrant favor W. H. Forse | 2,182.16 | " | " " 3rd " " | 2,750.00 |
| " | " collections 1st qr. 1879 | 528.19 | " | " " 4th " " | 10,853.72 |
| " | " deduction " | 50.25 | " | " " 1st " 1880 | 10,853.72 |
| " | " warrant favor W. H. Forse | 2,171.56 | " | " remission of deduction | 1,248.24 |
| " | " collections 2nd qr. 1879 | 536.67 | " | " transportation 2nd qr. 1880 | 10,853.72 |
| " | " warrant favor W. H. Forse | 2,213.33 | " | " " 3rd " " | 10,853.72 |
| " | " collections 3rd qr. 1879 | 556.30 | " | " " 4th " " | 10,853.72 |
| " | " warrant favor W. H. Forse | 2,193.70 | " | " " 1st " 1881 | 10,853.72 |
| " | " collections 4th qr. 1879 | 592.40 | " | " " 2nd " " | 10,853.72 |
| " | " deduction " | 1,367.18 | " | " " 3rd " " | 10,853.72 |
| " | " warrant favor W. H. Forse | 6,290.42 | | | |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " collections 1st qr. 1880 | 704.81 | | | |
| " | " deduction " | 29.73 | | | |
| " | " warrant favor W. H. Forse | 1,248.24 | | | |
| 72 | " warrant favor W. H. Forse | 7,515.46 | | | |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " collections 2nd qr. 1880 | 595.04 | | | |
| " | " deduction " | 463.72 | | | |
| " | " warrant favor W. H. Forse | 7,191.24 | | | |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " " " W. H. Forse | 8,250.00 | | | |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " " " W. H. Forse | 8,250.00 | | | |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " deduction 1st qr. 1881 | 148.67 | | | |
| " | " warrant favor W. H. Forse | 8,101.33 | | | |
| " | " " " A. H. Brown, assignee | 2,603.72 | | | |
| " | " deduction 2nd qr. 1881 | 6.90 | | | |
| " | " warrant favor W. H. Forse | 10,846.82 | | | |
| " | " deduction 3rd qr. 1881 | 43.05 | | | |
| " | " warrant favor W. H. Forse | 10,810.67 | | | |
| 73 | " deduction 4th qr. 1881 | 105.91 | " | " transportation 4th qr., 1881 | 8,364.36 |
| " | " warrant favor W. H. Forse | 8,258.45 | " | " " 1st " 1882 | 5,875.00 |
| " | " deduction 1st qr. 1882 | 67.23 | " | " " 2 " " | 5,875.00 |
| " | " warrant favor W. H. Forse | 5,807.77 | | | |
| " | " deduction 2nd qr. 1882 | 227.67 | | | |
| " | " warrant favor W. H. Forse | 5,647.33 | | | |
| | | 121,942.36 | | | 121,942.36 |

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
*Washington, D. C., September 18th, 1884.*

HON. H. D. LYMAN,
*Second Ass't P. M. General, Washington, D. C.*

74 G. F. S.
Sep. 20, '84.

Route No. 46213.

Cloverdale to Eureka, California.
Contract term, July 1, 1878, to June 30, 1882.
Contractor, William H. Forse.

Cost of service was as follows:

| | |
|---|---|
| From July 1, 1878, to Sep. 30, 1879, @ $11,000.00 per annum | $13,750.00 |
| From Oct. 1, 1879, to Nov. 15, 1881, @ $43,414.88 per annum | 92,256.62 |
| From Nov. 16, 1881, to June 30, 1882, @ $23,500.00 per annum | 14,687.50 |
| Total allowance for service | 120,694.12 |

Deductions were made as follows:

| | |
|---|---|
| Quarter ended Sep. 30, 1878 | $31.04 |
| " " Mar. 31, 1879 | 50.25 |
| " " Dec. 31, 1879 | 1,367.18 |
| " " Mar. 31, 1880 | 29.73 |
| " " June 30, 1880 | 463.72 |
| " " Mar. 31, 1881 | 148.67 |
| " " June 30, 1881 | 6.90 |
| " " Sep. 30, 1881 | 43.05 |
| " " Dec. 31, 1881 | 105.91 |
| " " Mar. 31, 1882 | 67.23 |
| " " June 30, 1882 | 227.67 |
| Total deduction | 2,541.35 |

75 Remission was made as follows:

| | | |
|---|---|---|
| Quarter ended Dec. 31, 1879 | $1,284.24 | |
| Total remission | | $1,284.24 |
| Deductions not remitted | | 1,257.11 |

RECAPITULATION.

| | |
|---|---|
| Total allowance for service | $120,694.12 |
| Total deduction not remitted | 1,257.11 |
| Amount actually paid for service | 119,437.01 |

76 Pay for service on the basis of stock and carriers actually employed would be as follows:

| | |
|---|---|
| From July 1, 1878, to Sep. 30, 1879, @ $11,000.00 p. a... | $13,750.00 |
| " Oct. 1, 1879, to Nov. 15, 1881, @ $16,694.68 p. a... | 35,476.19 |
| " Nov. 16, 1881, to June 30, 1882, @ $14.180.15 p. a.. | 8,862.58 |
| Total allowance for service on new basis..... | 58,088.77 |

Deductions on new basis would be as follows:

| | |
|---|---|
| Quarter ended Sep. 30, 1878 ..... | $31.04 |
| " " Mar. 31, 1879..... | 50.25 |
| " " Dec. 31, 1879 ..... | 206.03 |
| " " Mar. 31, 1880..... | 11.43 |
| " " June 30, 1880 ..... | 89.17 |
| " " Mar. 31, 1881 ..... | 57.15 |
| " " June 30, 1881 ..... | 88 |
| " " Sep. 30, 1881..... | 5.42 |
| " " Dec. 31, 1881..... | 16.70 |
| " " Mar. 31, 1882..... | 16.15 |
| " " June 30, 1882 ..... | 28.67 |
| Total deduction on new basis ..... | 512.89 |

77 Remission on new basis:

| | | |
|---|---|---|
| Quarter ended Dec. 31, 1879..... | $160.31 | |
| Total remission on new basis ..... | | 160.31 |
| Total deduction less remission ..... | | 352.58 |

Recapitulation on new basis:

| | |
|---|---|
| Total allowance for service on new basis ..... | 58,088.77 |
| Total deduction, less remission on new basis... ..... | 352.58 |
| Amount which should have been paid..... .... ..... | 57,736.19 |

Final recapitulation:

| | |
|---|---|
| Amount actually paid for service..... | 119,437.01 |
| Amount which should have been paid ..... ..... ..... .. | 57,736.19 |
| Amount to be recouped..... ..... | 61,700.82 |

(Endorsed:) Filed March 6, 1885. L. S. B. Sawyer, clerk.

78 *Summons.*

United States of America, circuit court of the United States, ninth circuit, district of California.

Action brought in the said circuit court and the complaint filed in the office of the clerk of said circuit court in the city and county of San Francisco.

THE UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
WILLLAM HENRY FORSE, DEFENDANT.

The President of the United States of America, greeting:

To WILLIAM HENRY FORSE:

You are hereby requested to appear in an action brought against you by the above-named plaintiff, in the circuit court of the United States, ninth circuit, in and for the district of California, and to file your plea, answer, or demurrer to the amended complaint filed therein (a certified copy of which accompanies this summons) in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons, if served in this county, or if served out
79 of this county then within thirty days, or judgment by default will be taken against you.

The said action is brought to recover from you the sum of sixty-one thousand and seven hundred $\frac{82}{100}$ dollars, money alleged to have been had and received by you and paid by said plaintiff to you by reason of your false and fraudulent representations, &c., &c., together with interest thereon from the 30th day of June, 1882, at the rate of six per centum per annum, and the costs of this action; all of which is more fully set out in the amended complaint on file herein, to which reference is hereby made, and if you fail to appear and plea', answer, or demur, as herein required, your default will be entered, and the plaintiff will take judgment against you for the said sum of $\$61,700\frac{82}{100}$, together with interest thereon, as aforesaid, and the costs of this action.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixth day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th.

[SEAL.] L. S. B. SAWYER,
*Clerk.*

80 (Endorsed:)

UNITED STATES MARSHAL'S OFFICE,
*District of California:*

I hereby certify that I received the within writ on the 13th day of March, 1885, and personally served the same on the 21st day of April, 1885, by delivering to, and leaving with, William H. Forse, said defendant named therein, personally, at the city & county of San Francisco, in

said district, a certified copy thereof, together with a certified copy of the bill of complaint.

M. M. DREW,
*U. S. Marshal,*
By B. J. AKERMAN,
*Deputy.*

Filed April 22, 1885.

L. S. B. SAWYER,
*Clerk,*
By F. D. MONCTON,
*Deputy Clerk.*

81 *Answer.*

In the United States circuit court, ninth circuit, district of California.

THE UNITED STATES
*vs.*
WILLIAM H. FORSE.

Now comes the defendant herein, by his attorney, L. D. Latimer, and for answer and defense to the amended complaint of plaintiff on file herein denies generally and specifically all and singular the allegations of said complaint and the matters and things therein contained.

Wherefore defendant prays to be hence dismissed with judgment for his costs herein.

L. D. LATIMER,
*Attorney for Defendant.*

(Endorsed:) Due service of copy of within answer admitted this May 20th, 1885.

S. G. HILLBORN,
*United States Attorney.*

Filed May 20th, 1885.

L. S. B. SAWYER,
*Clerk.*

82 *Verdict.*

United States circuit court, ninth circuit, district of California.

THE UNITED STATES OF AMERICA
*vs.*
WM. H. FORSE.

We, the jury, find for the defendant.

G. W. BEAVER,
*Foreman.*

(Endorsed:) Filed March 10, 1886.

L. S. B. SAWYER,
*Clerk.*

83 *Judgment.*

United States of America, circuit court of the United States, ninth judicial circuit, district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
WILLIAM H. FORSE, DEFENDANT. } No. 3524.

This cause having come on regularly for retrial on the 2nd day of March, 1886, being a day in the February, 1886, term of said court, before the court and a jury of twelve men duly impaneled, S. G. Hilborn, esq., United States attorney, and Henry C. Dibble, esq., assistant United States attorney, appearing for the plaintiff, and L. D. Latimer and George A. Knight, esqrs., appearing for the defendant, and the retrial having been proceeded with on the 3rd, 4th, 5th, 9th, and 10th days of said month, and the evidence, oral and documentary, having been introduced
84 and closed, the cause, after arguments of counsel and the instructions of the court, was submitted to the jury, and the jury having subsequently rendered the following verdict: "We, the jury, find for the defendant," and the court having ordered that judgment be entered herein in accordance with said verdict:

Now, therefore, by virtue of the law, and by reason of the premises aforesaid, it is considered by the court that the United States of America, plaintiff, take nothing by this action, and that William H. Forse, defendant, go hereof without day.

Judgment entered March 10, 1886.

L. S. B. SAWYER,
*Clerk.*

I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above entitled cause.

Attest my hand and the seal of said circuit court this 10th day of March, A. D. 1886.

[SEAL.] L. S. B. SAWYER,
*Clerk.*

(Endorsed:) Filed March 10, 1886.

L. S. B. SAWYER,
*Clerk.*

85 *Clerk's certificate to judgment roll.*

United States of America, circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA
*vs.*
WM. H. FORSE. } No. 3524.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, within and for the district of California, do

hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the therein-entitled action.

Witness my hand and the seal of said circuit court this 10th day of March, A. D. 1886.

[SEAL.] L. S. B. SAWYER,
*Clerk,*
By F. D. MONCTON,
*Deputy Clerk.*

(Endorsed:) Judgment roll. Filed March 10th, 1886.
L. S. B. SAWYER,
*Clerk,*
By F. D. MONCTON,
*Deputy Clerk.*

86 *Bill of exceptions.*

In the circuit court of the United States in and for the ninth circuit, district of California.

THE UNITES STATES
*vs.*
WILLIAM H. FORSE.

Be it remembered that this case came on regularly for trial at stated term of said court, on the 2d day of M'ch, 1886, and divers days thereafter, before a jury duly sworn and empanelled to try said cause; Honorable Lorenzo Sawyer, circuit judge, presiding; Samuel G. Hilborn, esq., United States attorney, and Henry C. Dibble, esq., assistant United States attorney, appeared for the plaintiff, and L. D. Latimer, esq., and George A. Knight, esq., appeared for the defendant.

Whereupon the following proceedings were had: The plaintiff's counsel offered documentary evidence, and several witnesses were duly sworn and testified for the plaintiff, which testimony tended to show that the said defendant, Force, and the plaintiffs entered into the several
87 contracts set out in the complaint, and that said Force did furnish the plaintiffs the estimate as to the number of men and horses necessary to carry the mails on said route, mentioned in the complaint, on slow and expedited time, and increase of service, set out in Exhibit B, annexed to and made part of the complaint. And plaintiffs also introduced testimony bearing upon the correctness and good faith of said estimate; also, testimony tending to show that said service was in fact increased and the mails expedited in pursuance of said second contract, and that said defendant, Force, received extra compensation therefor, as in said contract provided.

The plaintiff then rested, and thereupon counsel for defendant moved the court to instruct the jury to find a verdict for the defendant, basing said motion upon the ground that there was not sufficient evidence to sustain a verdict for the plaintiff. This motion was, with some doubt and hesitation, overruled by the court, to which ruling defendant's counsel excepted; thereupon various witnesses were sworn for the defend-
88 ant, and testified in his behalf, said testimony tending to show the good faith of said Forse in making said statement contained in said

Schedule B, annexed to and made a part of the complaint, and tending to show the correctness of said estimate. Defendant rested, and after argument by counsel, the court charged the jury, among other things, as follows:

"I instruct you, gentlemen, as a matter of law, that unless a false and fraudulent estimate was made by the defendant, and presented to the Postmaster-General, and unless the Postmaster-General relied upon the false and fraudulent representations as to the facts, and entered into the contract without acting upon his own knowledge or exercising his own judgment upon facts known to him, then the Government cannot recover. If this estimate was honestly made, and presented to the Government in good faith, even though the Government acted upon it, there can be no recovery. The Government was authorized to enter into an arrangement for expediting the mails, and it can only recover if there was fraud
89 on the part of the defendant by which it was deceived and imposed upon.

"Gentlemen, it is for you to determine whether there was a false estimate made by defendant, and if so, whether the defendant knowingly and fraudulently mis'tated the facts in regard to the number of men and animals necessary to perform the services in question; and whether the Government relied upon such fraudulent estimate and statement instead of exercising its own judgment upon facts known to itself, or otherwise acquired, or not."

To which said portion of the charge of the court stating that the statement and estimate of said defendant Forse must be false and fraudulent to entitle plaintiff to recover, plaintiff's counsel, Samuel G. Hilborn, esq., then and there excepted.

And thereupon the case was given to the jury, who returned a verdict for the defendant. The entire charge of the court was as follows:

90 In the circuit court of the United States in and for the ninth circuit, district of California.

The Hon. Lorenzo Sawyer, judge.

THE UNITED STATES }
*vs.* }
WILLIAM FORCE. }

WEDNESDAY, *March* 10, 1886.

*Charge to the jury.*

The COURT (orally):

GENTLEMEN OF THE JURY: This case depends mostly on an issue of fact. There is very little law in it. The law you will take from the court. The facts are for you to determine on the evidence.

The plaintiff sues to recover back moneys paid under a contract for carrying the mails. The first count alleges that after the contract was originally made arrangements were entered into for expediting the mails, and that the defendant gave an estimate of the amount of stock and the
91 number of men necessary to carry it on the slow time as the contract was first made, and then the number of men and horses nec-

essary to carry it on the fast time after it was expedited. If this estimate was substantially correct and in accordance with the requirements of the service on slow and fast time respectively, of course there can be no recovery in this suit; and there is testimony tending strongly to show that the estimate was correct and substantially such as the service actually required. But the Government alleges that the defendant falsely and fraudulently misrepresented the facts and knowingly made a false estimate as to the requirements of the service, and that relying on that estimate and the false representations made by the defendant, it entered into the contract with the defendant for expediting the mails, in which the money sought to be recovered was paid. There is a second count for money had and received in which the allegations of fraud are omitted. I instruct you, gentlemen, as a matter of law, that unless a false and fraudulent esti-
92 mate was made by the defendant and presented to the Postmaster-General, and unless the Postmaster-General relied upon the false and fraudulent representations as to the facts, and entered into the contract without acting upon his own knowledge or exercising his own judgment upon facts known to him, then the Government cannot recover. If this estimate was honestly made and presented to the Government in good faith, even though the Government acted upon it, there can be no recovery. The Government was authorized to enter into an arrangement for expediting the mails, and it can only recover if there was fraud on the part of the defendant by which it was deceived and imposed upon. If the Government did not rely on defendant's statement, but adopted it relying wholly on its own knowledge of the facts and its own judgment, entered into the contract on its own judgment and other information as to what was necessary, then the defendant is not liable, because in that view the Postmaster-General did not rely for the facts on the defendant's statement, although he may have adopted the number fixed as the basis on which he fixed the amount of compensation.

93 If the Postmaster-General acted on his own information and judgment as to the facts without reference to defendant's representation and without relying on his statement as to the fact whether so many men and horses were required or not, there can be no recovery.

Gentlemen, it is for you to determine whether there was a false estimate made by defendant, and, if so, whether the defendant knowingly and fraudulently misstated the facts in regard to the number of men and animals necessary to perform the services in question; and whether the Government relied upon such fraudulent estimate and statement instead of exercising its own judgment, upon facts known to itself or otherwise acquired, or not. The burthen of proof is on the United States. They allege the acts of fraud, and they must prove them to your satisfaction. They must prove the fraud by a preponderance of evidence satisfactory to your minds, prove by a preponderance of evidence that there was a fraud, in fact, perpetrated on the Government. If they failed to do this
94 you must find a verdict for the defendant. Fraud is not to be presumed. Fraud is an offence against the law. It is immoral. Every man is presumed to act in good faith until the contrary is shown. The presumption of innocence prevails until overthrown by satisfactory proof to the contrary. Unless the Government has shown to your satisfaction by a preponderance of evidence that this fraud has been perpe-

trated, as alleged, and relied on by the Government, there must be a verdict for the defendant.

You are the judges of the credibility of the witnesses. You have seen them on the stand. They all apparently seem to be men of candor, experience, and good judgment. There is considerable evidence here tending strongly to show that this service of carrying the mails in the slow time could have been performed by 11 men and 36 horses—the number stated by the defendant. In the opinion of experts who were called it could be so done. There is, also, the affidavit presented of the defendant that it could be done.

95 There is testimony tending to show that 31 men and 128 horses were required on the expedited time, and I believe, although you must trust your own recollection on that subject, there was no witness called who expressed a contrary opinion on these points. There has been testimony showing how much stock and how many men were actually used in performing the services on both schedules of fast and slow time. There is some testimony tending to show that a great deal less would be sufficient for the carrying of the mail alone than for carrying the mail and passengers also. I do not remember that there is any witness who positively contradicted the testimony of those witnesses who state that the mail could be carried by 11 men and 36 horses on slow time. If there is any you will remember it. The testimony has not been so distinctly brought out as to the difference in men and stock required for carrying the mail by itself and carrying it in connection with passengers on some parts of the route on the fast time. The defendant was only obliged under the contract to carry the mail. It was only necessary for him to employ,

96 whether he got sufficient pay or not for it, men and horses enough to carry the mail on the slow time, and it was necessary to employ all the horses and men required to carry it on the fast time. You must separate that from his general business. It may have required much less stock, and many less head of horses, and a much less number of men to carry the mails alone than to carry the mails, passengers, baggage, and freight.

You have heard the testimony, gentlemen, and must make up your minds as to whether the defendant did present that estimate as a fair and honest estimate of what was required for a seven days' service, on slow time, 11 men and 36 horses, and 31 men and 128 horses on the fast time. It is admitted on both sides that if it required 11 men and 36 horses to carry the mail alone, it could not be carried without loss for $11,000, but that is a matter for the party himself. He says he was not required to

97 carry it separately. That is so. The Government contemplated that he would carry it in combination with his other business of carrying passengers, baggage, and freight, and the Government got the benefit of that mode of carrying when it got the contract for $11,000, which would, according to my calculation, be only 65 cents a head per day for men and horses, the wagons and harness and all the etcetera to keep it in order being thrown in. Both sides admit that if it required 11 men and 36 horses to carry the mail by itself, it could not be done without loss for that money. The Government, therefore, has got the benefit of the carrying, in combination with the other business, and as bearing on this question of good faith, I think you are entitled to take this fact into consideration. The defendant may very well have said, "there are my passengers and baggage and freight, which is much larger than the mail."

He may very well, in making his estimate, have divided it up, and said, "so much of this is attributable to carrying the mail, so much is attributable to carrying the passengers, freight, etc. I have never been called upon and never agreed to carry the mail independently.

98 The Government understood, and its counsel admits, that he never was expected to carry it independently, but in combination; therefore, it would take less horses and men to carry the mail in combination than separately. He may very well have honestly considered that, and appropriated such a part of the teams and horses for carrying the mails and the other for the passengers and other things, even if it could not be carried with 11 men and 36 horses by itself. That fact, I think, you are entitled to consider in determining the question of good faith. There is considerable testimony tending to show that the mail could be carried alone with 11 men and 36 horses on slow time, and there is testimony which is not contradicted as to how many men and horses were employed in doing the whole business, but defendant was only bound under his contract to carry the mail. If you find that these representations were made in good faith, that defendant made a fair and honest estimate, and stated

99 the facts as he honestly believed them to be, there must be a verdict for defendant.

Mr. Bullard, a witness for the Government, of great experience, who seems to be a witness disposed to be against defendant rather than for him, says that he and defendant did sit down and consider the question together, and he estimated with Mr. Force the number of men and horses required on slow and fast schedules of time, and that he made the same estimate that Mr. Force reported to the Department, and he says it was done with an honest intent to make a fair estimate, and that he believe the estimate correct and such in good faith as the Government required. The Government is giving out contracts for carrying the mails all over this vast country. The number of this mail contract is above 6,000. They have been, ever since the Government was established, letting contracts for carrying the mails. The officers of the Government cannot be supposed to be ignorant of the mode of carrying the mails and the means necessary for the purpose. The Government, according to the testimony, has its

100 agents out detecting frauds and looking after matters of this sort. The officers in charge, with their great experience, must be supposed to be as well informed on most of these matters as other people. If the jury is satisfied that the Government officers adopted this estimate on their own knowledge and judgment independently of this estimate, then they did not rely on defendant. They merely adopted the estimate as being the proper basis for apportioning the compensation and carried it out. If you believe that the defendant acted in good faith, and honestly made and reported such an estimate as he thought was correct, and the service required, then there cannot be a recovery. If you believe the Government did not act on that, but simply adopted it on its own judgment and knowledge independently of the defendant's representation, then plaintiff cannot recover, because the Government acted on its own responsibility. The fact that the apportionment of compensation was made in accordance with the estimate shows that the statement was in fact

101 made the basis of compensation. But there is no testimony to show that the Government relied on these representations for the

facts other than the fact that the compensation was made on that basis. If you find that defendant acted in all respects in good faith you will find a verdict for defendant. If, on the contrary, you find that he intentionally, willfully, and fraudulently made a false estimate with a view of deceiving the Government, and the Government, relying on his statement, acted on it, and the estimates are incorrect, by which means the Government has lost money, then the Government is entitled to recover and you will give it the amount overpaid and in such proportions as the excess upon the estimate adopted exceeds the actual service—the actual number of men and horses required.

Whereupon the foregoing bill was in due time, and in accordance with law and the rules and practice of the court, prepared, presented, settled, and allowed as correct.

102 In testimony whereof I have hereunto set my hand and seal this 7th day of May, A. D. 1886.

(Signed) LORENZO SAWYER,
*Circuit Judge.*

(Endorsed:) Receipt of a copy of within admitted this 29th day of March, 1886.

L. D. LATIMER,
*Attorney for Defendant.*

Filed March 29th, 1886.

L. S. B. SAWYER,
*Clerk,*
By F. D. MONCTON,
*D'p'y Cl'k.*

After settlement re-filed May 7th, 1886.

L. S. B. SAWYER,
*Clerk.*
By F. D. MONCKTON,
*D'p'y Cl'k.*

103 United States circuit court, ninth circuit, northern district of California.

THE UNITED STATES OF AMERICA
*vs.*
WILLIAM HENRY FORSE.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, in and for the northern district of California, do hereby certify that the foregoing one hundred and two pages, numbered from 1 to 102, inclusive, are a full, true, and correct copy of the record and of all proceedings in the therein and above entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 21st day of September, A. D. 1887.

[SEAL.] L. S. B. SAWYER,
*Clerk United States Circuit Court, Northern District of California.*

104 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States of the ninth judicial district, in and for the northern district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America, plaintiffs in error, and William Henry Forse, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, District of Columbia, on the second Monday of October next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 19th day of September, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL.] L. S. B. SAWYER,
*Clerk of the Circuit Court of the United States for the Northern District of California.*

The above writ of error is hereby allowed.

LORENZO SAWYER,
*U. S. Circuit Judge, Ninth Judicial Circuit.*

105 The answer of the judges of the circuit court of the United States for the northern district of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States of America, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

L. S. B. SAWYER,
*Clerk.*

(Indorsed:) (Original) No. 3524. United States Supreme Court. The United States of America, pl'ffs in error, vs. William Henry Forse, def't in error. Writ of error. Service of a copy of the within writ of error is hereby acknowledged without prejudice. L. D. Latimer, attorney for def't and def't in error. Filed Sept. 20, 1887. L. S. B. Sawyer, clerk U. S. circuit court, northern district of California.

106 UNITED STATES OF AMERICA, *ss:*

To William Henry Forse, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 10th day of October, A. D. 1887, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of California, wherein the United States of America are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Lorenzo Sawyer, judge of the circuit court of the United States of the ninth judicial circuit, this 19th day of September, A. D. 1887, and of the Independence of the United States the one hundred and twelfth.

LORENZO SAWYER,
*U. S. Circuit Judge, Ninth Judicial Circuit.*

107 (Indorsed:) (Original) No. 3524. In the Supreme Court of the United States. The United States of America, pl'ffs in error, vs. William Henry Forse, def't in error. Citation. Service of a copy of the within citation is hereby acknowledged without prejudice. L. D. Latimer, att'y for def't and def't in error. Filed Sept. 20, 1887. L. S. B. Sawyer, clerk U. S. circuit court northern district of California.

(Indorsement on cover:) No. 1089. The United States, plaintiff in error, vs. William Henry Forse. In California C. C. U. S. Filed October 3, 1887.

OCT 19 1890
FILED.
NOV 19 1890
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

WILLIAM HENRY FORSE.

No. ~~1080~~. 129

# DEFENDANT'S BRIEF.

L. D. LATIMER,
*Attorney for Defendant.*

# SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES,
*Plaintiff in Error,*
vs.
WILLIAM HENRY FORSE.

## STATEMENT OF THE CASE.

The Plaintiff in error—the United States—was the Plaintiff in the Court below.

The cause of action, as stated in the complaint, may be briefly stated as follows:

The defendant was a contractor for carrying the United States Mail from Cloverdale to Eureka, Cal., and way post offices, on a certain schedule of time and trips, and on the 17th day of September, 1879, an order was made by the Post Office Department, agreed and consented to by the defendant, * * (pg. 16, fol. 45, printed record) expediting the schedule, and reducing the running time upon which the mail over said route was carried from 72 hours in summer, and 96 hours in winter, to 36 hours in summer and 70 hours in winter, and allowing an additional sum therefor of $30,581 $\frac{55}{100}$ per annum, which was paid. (Pg. 18, fol. 52 of printed record.)

The charge in the complaint then is that the allowance of this additional sum was made upon the basis of a statement made by the defendant, which statement is annexed to the complaint as *Exhibit B*, and is as follows:

"UKIAH, Cal., July 26th, 1879.

"To perform the mail service on mail route No. 46,213, Clover-
" dale to Eureka, under the present schedule of seventy-two (72)
" hours in summer and ninety-six (96) hours in winter, seven times
" a week, will require eleven (11) men and thirty-six (36) horses,
" and to perform the same mail service on a schedule of thirty-six
" (36) hours in summer, and seventy (70) hours in winter, will require
" thirty-one (31) men and one hundred and twenty-eight (128) horses.
" Signed, W. H. FORSE,
" *Contractor.*"

(Pg. 24, fol. 69, printed record.)

It is then charged in the complaint that such statement was false and fraudulent, that the number of men and horses required to perform the service on the slower schedule of time was not less than 21 men and 92 horses, and the number required on the expedited

schedule did not exceed 28 men and 119 horses, and that the defendant had, by reason of such [illegible] statement, induced the plaintiff to enter into the contract with him to pay the additional sum before named, and by reason thereof had defrauded the plaintiff out of the sum sued for.

The defendant denied generally the allegations of the complaint.

The cause was tried by a jury and verdict was for the defendant.

There is but one exception in the record, and that is to a "portion" of the charge of the Court to the jury. (pg. 33, fol. 89, printed record.)

The entire charge of the Court to the jury is contained in the Bill of Exceptions. (Printed record, pgs. 33 to 37 inclusive.)

In making its exception the plaintiff picked out from the charge —or instructions—this "portion," to-wit:—

"I instruct you gentlemen, as a matter of law, that unless a "false and fraudulent estimate was made by the defendant, and "presented to the Postmaster-General, and unless the Postmaster-"General relied upon the false and fraudulent representations as to "the facts, and entered into the contract without acting upon his "own knowledge or exercising his own judgment on facts known to "him, then the Government cannot recover.

"If this estimate was honestly made and presented to the Gov-"ernment in good faith, even though the Government acted upon it, "there can be no recovery.

"The Government was authorized to enter into an arrangement "for expediting the mails, and it can only recover if there was fraud "on the part of the defendant by which it was deceived and imposed "upon.

"Gentlemen, it is for you to determine whether there was a "false estimate made by defendant, and if so, whether the defendant "knowingly and fraudulently misstated the facts in regard to the "number of men and animals necessary to perform the services in "question; and whether the Government relied upon such fraudulent "estimate and statement instead of exercising its own judgment "upon facts known to itself, or otherwise acquired or not."

Then follows plaintiff's exception, which is in words as follows:—

"To which said portion of the charge of the Court stating that "the statement and estimate of said defendant Forse must be false "and fraudulent to entitle plaintiff to recover, plaintiff's counsel, "Samuel G. Hilborn, Esq., then and there excepted." (Printed record, pg. 33.)

As to that exception the answer is:—

FIRST.

The record shows that the plaintiff made out no case; and how-

ever erroneous any instruction of the Court might have been, the plaintiff could not have been prejudiced thereby.

(*a*) That the plaintiff made out no case, nor even the shadow of a case, is apparent from the record.

The plaintiff's cause of action was based entirely on the assumption that the defendant's statement, *Exhibit B*, above referred to, was false and fraudulent.

The whole and entire case of the plaintiff, as shown by the record and contained in plaintiff's own Bill of Exceptions, is, that plaintiff introduced testimony which tended to show that the defendant "did furnish the plaintiff the estimate as to the number of men "and horses necessary to carry the mails on said route, mentioned "in the complaint, on slow and expedited time, and increase of service, "set out in Exhibit B, annexed to and made a part of the complaint. "And plaintiff also introduced testimony BEARING UPON THE "CORRECTNESS AND GOOD FAITH OF SAID ESTIMATE." (Printed record, pg. 32, fol. 87.)

That is all there is of the plaintiff's case. That is the whole of it in all its entirety. "*The plaintiff then rested.*" (Record, pg. 32, fol. 87.)

Upon this it is reasonable to infer against the party alleging error, that the testimony he introduced, "bearing upon the correctness and good faith of said estimate," was testimony which proved and established the correctness and good faith of said estimate, and without leaving the matter to inference alone, the inference becomes a settled fact when reference is made to the charge of the Court, where the Court says (printed record, pg. 36, fol. 99.):

"Mr. Bullard, a witness for the Government, of great experience, "who seems to be a witness disposed to be against the defendant "rather than for him, says that he and defendant did sit down, "and consider the question together, and he estimated with Mr. "Forse the number of men and horses required on slow and fast "schedules of time, and that he made the same estimate that Mr. "Forse reported to the Department, and he says that it was done "with an honest intent to make a fair estimate, and that he believes "the estimate correct and such in good faith as the Government "required."

So it is clear that the plaintiff did not make out any case, and:—

(*b*) Therefore the plaintiff could not have been prejudiced by any instruction to the jury, however erroneous it might have been.

This seems a plain, self-evident proposition, and the authorities are all one way with reference to it.

In *Lancaster* vs. *Collins*, 115, U. S. [illegible], 222, the Court says:

"No judgment should be reversed in a Court of error when it "is clear that the error could not have prejudiced, and did not

"prejudice the rights of the party against whom the ruling was "made," citing

*Hornbuckle* vs. *Stafford*, 111 U. S., 389.
*Mining Co.* vs. *Taylor*, 100 U. S., 337.
*Cannon* vs. *Pratt*, 99 U. S., 619.
*Allis* vs. *Insurance Co.*, 97 U. S., 144.
*Lucas* vs. *Brooks*, 18 Wall., 436.
*Gregg* vs. *Moss*, 14 Wall., 564.
*Deery* vs. *Cray*, 5 Wall., 795.

And in *Barth* vs. *Clise*, 12 Wall., 400, where the principal exceptions were to the instructions given by the Court to the jury, and also exceptions to the admission of testimony, the Court said:—

"In the view which we have found ourselves constrained to "take of the case, it is unnecessary to consider either of them. "* * * The plaintiffs in error, according to their own "showing, had not the shadow of a right to recover in this action "against Clise.

"Conceding, for the purpose of this opinion, that the Court "below erred in all the particulars complained of, the errors have "done them no harm.

"Opposite rulings could not have helped them. Their case was "inherently defective. The defect was incurable and inevitably "fatal."

And in *Levitzky* vs. *Canning*, 33 Cal., 305, the Court said, by Sanderson, J:

"It was error to charge the jury that the plaintiff was entitled "to recover, * * * but in view * * of the "very clear case made by the plaintiff, we think that a verdict for "the defendant would have been contrary to the evidence, and that "therefore the error must be regarded as immaterial."

And, in *Green* vs. *Ophir C. Co.*, 45 Cal., 527, the Court said:

"If it be conceded then that the Court erred in its instructions "to the jury * * it was an error which did not prejudice the "defendant. And it is the settled rule of this Court not to reverse "judgments for errors in instructions when it is apparent that "the verdict would have been the same with correct instructions."

## SECOND.

There was no error in the instructions of the Court to the jury.

And preliminarily it may be stated that the order of the Postmaster-General expediting the time and increasing the service, agreed to and accepted by the defendant, constituted a contract between plaintiff and defendant, which was performed by each party,

the defendant rendering the extra service and plaintiff paying therefor the extra compensation stipulated in such contract.

The instructions of the learned Judge of the Court below to the jury is a very terse, direct, complete and pointed statement of the question of law involved, and is sustained fully by all the modern decisions and the text writers.

It is in full accord with the late case of *Crowley* vs. *Smith* (46 N. J. Law, 380) the decision in which seems to have been well considered, able and exhaustive, and in which many cases are considered and reviewed.

It is also in direct line with what is said in :

Kerr on Fraud and Mistake, pgs. 382-3.
Bigelow on Fraud, 439, also pg. 63.
3 Wait's Actions and Defenses, pg. 445.
Abbott's Trial Evidence, pg. 616.
*Jarnett* vs. *Cooper*, 59 Cal., 706.

To this might be added what Pomeroy says in his Equity Jurisprudence, Vol. 2, Sec. 884, pg. 267 :

"It is now a settled doctrine of the law that there can be no "fraud, misrepresentation or concealment without some moral delin- "quency; that there is no actual *legal* fraud which is not also a moral "fraud. This immoral element consists in the necessary guilty knowl- "edge and the consequent intent to deceive. * * The very "essence of the legal conception is the fraudulent intention flowing "from the guilty knowledge. No misrepresentation is fradulent at "law, unless it is made with actual knowledge of its falsity, or under "such circumstances that the law must necessarily impute such "knowledge to any party at the time when he makes it."

And "An intention to deceive being a necessary element or "ingredient of fraud, a false representation does not amount to a "fraud at law, unless it be made with fraudulent intent."

Kerr on Fraud and Mistake, pg. 55.

And "Generally speaking, an honest statement of fact, believed "to be true by the party making it, though made with a view to be "acted upon, and justifying action upon it from the standpoint of "the conduct of the prudent man, will not, upon turning out to be "false, create a liability for damages against the party making it, "nor will it afford the complaining party ground for relief from any "contract which he may have made with the supposed wrongdoer "under the inducements of such a misrepresentation, so far, at least, "as such relief is demanded on the ground of fraud. Fraud is not "established, and redress or relief will not in general be granted, "without proof that the party who made the false representation "knew at the time that it was false."

Bigelow on Fraud, pg. 57.

Cases on this point might be multiplied, but from those cited it is clear that the instructions of the Court to the jury in this case are unexceptionable in any view of the case.

Then the case is thus:

1st. The plaintiff utterly failed to make out his case.

2d. Having so failed, no instruction of the Court to the jury, however erroneous, could have prejudiced him.

3d. Under any phase of the case, the instructions of the Court to the jury, were in all respects legal and without error.

4th. By reference to the evidence in the case stated by the Court in its instructions to the jury, there can be no question but that the jury found that the defendant's estimate and statement was honest and true.

## THIRD.

I have not overlooked the case of *The United States*, Plaintiff in Error, vs. *Barlow and Sanderson*, decided at the last term of this Court, the record of which, with briefs of counsel and the text of Mr. Justice Field's opinion, I have before me.

That case and this have no parallel—are widely and distinctively different. In that case it was admitted by the defendants, and it so appeared at the trial, that their statement to the Assistant Postmaster-General, dated Sept. 30th, 1878, (copied in the record and the opinion), was false, and, as stated in the opinion of the Court: "It is admitted that no additional horses and men for which "this allowance was made were ever employed. Neither the horses "nor the men exceeded the number originally employed to perform "the service, and the defendant Sanderson testified that no greater "number was necessary to perform it within the thirty-six (36) hours "mentioned, and that he never afterwards corrected his estimate, "but continued to draw pay from the government as though the "additional horses and men were employed."

And again, in the opinion Mr. Justice Field says:

"It cannot be pretended that the allowance for expediting the "service over the new route was not made upon erroneous repre-"sentations. *It is admitted that such was their character.*"

Upon that state of facts this Court held that the Court below erred in refusing to give the instructions asked by the plaintiff, and in giving the instructions which the Court did give, which instructions are each stated in substance in the opinion, this Court holding that under such a state of facts the provisions of Secs. 3951 and 4057 of the Revised Statutes entitled the plaintiff to recover.

But the case at bar is radically different. In it there does not appear to have been any erroneous statement at all by the defend-

ant, but on the contrary it appears that his statement was correct and true, and even if in this case the Court had refused to give and had given the same instructions that were refused and given in the Barlow case, (which it in no form or manner did), no one could have been prejudiced thereby. And here I wish to say again, by way of emphasis, that the Plaintiff in Error has not produced a particle of evidence having the least tendency to show that Mr. Forse's statement was not in every respect correct and true, but so far as the statement of the testimony by the judge below in his charge to the jury goes, (and if we do not look to that we have nothing else in the record to look to even to get an inkling of what the testimony was), it appears that Forse's statement was full, fair, true and correct, and that the extra number of men, horses, etc., which he named in his statement was necessary and actually used to carry out the expedited time, and that the slower time did not require for the performance of the service more men and horses than he named in his statement.

In his charge, the learned Judge said :

"If this estimate" (the estimate made by Forse) "was substantially correct and in accordance with the requirements of "the service on slow and fast time respectively, of course there "can be no recovery in this suit; and there is testimony tending "strongly to show that the estimate was correct and substantially "such as the service actually required." (Printed record. pg. 34.)

And again (printed record, pg. 35), the Court said:

"You are the judges of the credibility of the witnesses. You "have seen them on the stand. They all apparently seem to be "men of candor, experience and good judgment.

"There is considerable evidence here tending strongly to show "that this service of carrying the mails in the slow time could have "been performed by eleven (11) men and thirty-six (36) horses— "the number stated by the defendant. In the opinion of experts "who were called it could be so done. There is, also, the affidavit "presented of the defendant that it could be done.

"There is testimony tending to show that thirty-one (31) men "and one hundred and twenty-eight (128) horses were required on "the expedited time, and I believe, although you must trust your "own recollection on that subject, *there was no witness called who "expressed a contrary opinion* ON THESE POINTS. * * * "I do not remember that there is any witness who positively con- "tradicted the testimony of those witnesses who state that the "mail could be carried by eleven (11) men and thirty-six (36) "horses on slow time. If there is any you will remember it."

(The italics are my own.)

It seems to be a matter of supererrogation to repeat, that as shown by the respective records, the case of Barlow and Sanderson and the case at bar have no parallel at all, but are distinct.

ively and totally different, and that there is not a single feature of the decision in the Barlow case which can, by possibility even, have application to this.

It would seem unnecessary to follow the matter further, but it may be said:

In this case there has been no fraud or deceit or mistake of fact.

No "money has been paid out of the funds of the Post Office "Department under the pretense that service has been performed "therefor, when, in fact, such service has not been performed." No allowance for increased service has been made beyond that allowed by law, and there has never been any such claim or contention in this case. The matter of *fraudulent representations* has been already considered, and there has been no claim in this case that money of the department has been paid to the defendant by the "collusion or misconduct of any officer or other employe in the "postal service."

And so I submit that in neither Sec. 3960-3961 nor 4057 of the Revised Statutes nor in the common law, is there anything which by any possibility could inculpate this defendant, and that there can be found nothing in the whole record which even suggests any moral or legal claim against him or any lack of perfect honesty and good faith on his part.

It only remains to add that the late decision of this Court of May 19, 1890, in the case of the *United States* vs. *Voorhees*, reported in 10 Supreme Court Reporter 841, is absolutely conclusive as against any pretended right of the plaintiff to recover in this case.

It is respectfully submitted that the judgment of the Court below must be affirmed.

L. D. LATIMER,
*Attorney for Defendant.*